

REMARKS

In light of the above amendatory matter and remarks to follow, reconsideration and allowance of this application are respectfully requested.

In the Office Action under reply, the Examiner required suitable legends for Figs. 4-6. By this amendment, Figs. 4-6 are labeled "Prior Art." These drawing figures represent different formats of data structures.

Claims 1-14 were rejected in view of U.S. Published Application 2003/0146981 (Bean). Bean was applied as an anticipatory reference to reject claims 1, 2, 4, 5, 7-9, 11, 12 and 14. Bean was combined with U.S. Patent 7,047,305 (Brooks) to reject claims 3 and 10 under 35 USC 103. Bean was combined with U.S. Published Application 2003/0011689 (Shioji) to reject claims 6 and 13 under 35 USC 103.

Independent claims 1 and 8 are amended to emphasize the features implied therein and not suggested by Bean, even if Bean is supplemented with Brooks and/or Shioji. Claims 2-7 and 9-14 are amended to be consistent with claims 1 and 8, respectively. It is submitted that these claims, as originally presented, are patentably distinct over the prior art cited by the Examiner, and that these claims were in full compliance with the requirements of 35 USC 112. Changes to these claims, as presented herein, are not made for the purpose of patentability within the meaning of 35 USC sections 101, 102, 103 or 112. Rather, these changes are made simply for clarification.

The present invention, as defined by claim 1, is directed to an imaging apparatus wherein image data of a captured image is generated at a predetermined frame rate; and the frame rate of the captured image data thereafter is set to a variable frame rate (stated to be the "set frame rate" in the claims). In addition associated information indicating the set frame rate is generated; and

this associated information is combined with the image data (whose frame rate has been changed from the predetermined frame rate to the set frame rate) and transmitted. Claim 8 is directed to the method performed by the imaging apparatus of claim 1 and recites features that mirror the features recited by claim 1.

Bean generates captured image data at frame rate determined by the user (see paragraphs [0011], [0018] and [0021], for example, of Bean). That is, Bean does not generate a captured image at a predetermined frame rate and then change that frame rate to a “set frame rate,” as recited in claims 1 and 8. Bean’s capture frame rate is varied “while capturing the frames” (paragraph [0014]. In contrast, the present invention captures an image at a predetermined frame rate and then varies, or sets, that frame rate to another value.

In comparing Bean to Applicant’s claims, the Examiner contends that Bean’s imaging device 136 “read[s] a signal captured out of an image pickup device...” However, Bean’s device 136 is the image pickup device -- it does not read a signal captured by an image pickup device. That is, Bean does not describe an image pickup device and another device that reads the signal from that pickup device. Bean uses only one device -- the image pickup device itself.

Additionally, the Examiner contends that Bean’s controller 134 “generat[es] associated information for indicating at least said set frame rate.” But, a careful reading of Bean fails to uncover anything that generates any information that indicates the frame rate of the image data produced by Bean’s fps subroutine 172. Presumably, Bean does not need to indicate the frame rate of his image data because only pre-set frame rates can be used, and the frequency of the frames of the video data can be detected without providing any additional information indicative of that frame rate. In any event, Bean does not suggest generating information that indicates the frame rate of his image data.

Finally, the Examiner contends that Bean's transmitter 174 "combin[es] said associated information with said image data." As mentioned above, Bean does not generate the claimed associated data and, therefore, there is no associated data for Bean to combine with his image data.

Therefore, since several features recited by claims 1 and 8 find no correspondence in Bean, it is respectfully requested that the rejection of these claims as being anticipated by Bean be withdrawn. Moreover, since these features are not described in Brooks or Shioji, it follows that claims 1 and 8 are unobvious over Bean, even if Bean is attempted to be supplemented by these secondary references.

Applicant's representative makes additional observations. With respect to the stated rejection of claim 4, contrary to the Examiner's conclusion that Bean's controller 134 alters the frequency of reading the captured signal from the image pickup device, Bean states that it is the capture frequency that is altered by the user while the frames are in the process of being captured, and not the reading frequency (see Bean paragraphs [0010] and [0014] for example).

With respect to the stated rejection of claim 5, the Examiner contends that Bean "allows for adding a sub-frame number to each of the frames of said set frame ... so as to include said sub-frame number in said associated information [0023]." But Bean makes no mention whatsoever of a sub-frame number. The Examiner contends "there must be said associated data associated with the image data." However, it is respectfully submitted, these contentions are not supported by Bean's disclosure. Rather, it appears the Examiner may be relying on Applicant's specification to read into Bean something that simply is not there.

With respect to the stated rejection of claim 7, the Examiner contends that Bean "transmits a signal combining said associated information with said image data to said signal

recording apparatus.” But, as noted above, Bean does not generate associated data and, therefore, there is no associated data for him to combine with his image data. Consequently, there is no combined data for Bean to record.

Therefore, since claims 1 and 8, together with those claims dependent thereon, recite features not disclosed or suggested by Bean, the withdrawal of the rejections of these claims under 35 USC 102 as being anticipated by Bean is respectfully requested.

Turning to the rejection of claims 6 and 13, the Examiner correctly notes that Shioji captures audio data at low, normal or high quality sampling rates. But, Applicant’s representative strongly disagrees that, just because different sampling rates can be used to determine the quality of the resultant digitized audio signal, one of ordinary skill in the art will learn from this that (a) audio should be added to the image data captured by Bean, and (b) that audio data should be sampled at a frequency “based on said set frame rate” as recited in Applicant’s claims 6 and 13. Shioji’s quality-dependent sampling frequency has nothing to do with the frame rate to which the image data is set, as called for by claims 6 and 13. Moreover, claims 6 and 13 call for combining the sampled audio data with the image data and the associated information. Shioji is silent with respect to this feature of combining; and as noted above, Bean has no associated data (or audio data, for that matter) to combine with his image data. Therefore, dependent claim 6 and 13 are further distinguished from the prior art for the additional reasons just noted.

In view of the significant differences between claims 1-14 and the teachings of Bean, even if Bean is supplemented by Brooks or by Shioji, the withdrawal of the rejections of these claims is respectfully urged.


Statements appearing above in respect to the disclosures in the cited references represent the present opinions of the undersigned attorney and, in the event the Examiner disagrees with any of such opinions, it is respectfully requested that the Examiner specifically indicate those portions of the references providing the basis for a contrary view.

Applicant's representative has earnestly sought to place this application in condition for allowance; and early notice to that effect is respectfully requested.

Please charge any additional fees that may be needed, and credit any overpayment, to our Deposit Account No. 50-0320.

Respectfully submitted,

FROMMER LAWRENCE & HAUG LLP
Attorneys for Applicant

By: 
William S. Frommer
Registration No. 25,506
Tel. (212) 588-0800